

# AviatCare Services



FOR:

- **State of Montana**

**January 18, 2017**

- ✓ **Maintenance Services**
  - a. 7 X 24 Technical Support
  - b. Repair Services
  - c. ProVision Support

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## 1. SERVICE LEVEL SUPPORT SUMMARY

The following table summarizes the Service Level Support that will be delivered to State of Montana:

ITEM	SUPPORT ELEMENT	DESCRIPTION	SLA TARGET
3	Access to Aviat Networks Customer Online Technical Support Site	Provides for self-serve on-line access and support for a variety of services such as RMA requests and Technical Support.	24 x 7
3.1	Repair Services	Covers repair or replacement of covered FRU's beyond the manufacturer standard equipment warranty period. Please note unless otherwise agreed within this Agreement the following Turnaround times represent our commitments: North America: - Currently manufactured products – 20 Calendar Days	Varies (see Section 4.1), unlimited quantities
3.2	Remote Technical Support 24/7	Service requests (SR's), remote technical support, and troubleshooting support.	24 x 7 Unlimited number of SRs
3.3	Provision Support	Aviat Networks shall provide remote technical support to the Customer on ProVision. The remote technical support 24X7 shall be provided as per the terms outlined in the Remote Technical Support section of this agreement. . Aviat Networks shall also provide general availability releases and product updates to the Customer free of charge during the coverage period.	24 X 7

## 2. SUPPORT COSTS

Annual Support Pricing				
Services	Services Part Number	Product Qty	Annual Unit Price (Per TR/ODU)	Annual Extended Pricing (10/1/2017 through 9/30/2018)
<ul style="list-style-type: none"> <li>✓ Technical Support: Available 24 X 7</li> <li>✓ Aviat Express (Web Support): Available 24 X 7</li> <li>✓ Repair Services: <ul style="list-style-type: none"> <li>✓ 20 Calendar Day turnaround time on Aviat Networks manufactured equipment</li> </ul> </li> </ul>	SNA-EWXXA1001230	<ul style="list-style-type: none"> <li>• (217) Eclipse ODU300 SO#'s: 2019925 (20), 2022050 (4), 2300266 (16), 2300383 (6), 2300965 (4), 2302358 (10), 2302890 (6), 2303294 (32), 2303881 (2), 2020670 (16), 2309161 (8), 2309873 (2), 2308499 (16), 2308616 (4), 2308618 (24), 2308614 (2), 2315665 (4)</li> <li>• (40) Eclipse ODU300 SO# 2320014</li> <li>• (1) Eclipse ODU300 SO# 2318882</li> </ul>	\$260	\$56,420
	SNA-EWXXA1001238	<ul style="list-style-type: none"> <li>• (4) Eclipse IRU600 SO#'s:2308618</li> </ul>	\$262	\$1,048

	SNA- EWXXA1001243	<ul style="list-style-type: none"> <li>(10) Eclipse ODU600 SO#'s: 2328976 (4), 2329958 (6)</li> </ul>	\$273	\$2,730
	SNA- EWXXA1001231	<ul style="list-style-type: none"> <li>(16) Constellation SO#'s: A62447</li> </ul>	\$338	\$5,408
	SNA- EWXXA1001233	<ul style="list-style-type: none"> <li>(144) TR5200 SO#'s: A74576 (24), A81676 (14) A64821 (14), A81658 (92)</li> </ul>	\$338	\$48,672
	SNA- EWXXA1001243	<ul style="list-style-type: none"> <li>(15) Eclipse ODU600 (In Warranty through 9/1/2016) SO#: 2402355 NA140225-32575 Lewis and Clark County Sheriffs Office</li> </ul>	\$273	\$4,095
	SNA- EWXXA1001243	<ul style="list-style-type: none"> <li>(12) Eclipse ODU600 SO#: 2409774 NA121102-36764 Contract expires 3/31/2018</li> </ul>	No Charge	Covered through 3/31/2018
<p>OEM: All OEM is an Extension of Warranty services offered by that Vendor</p> <ul style="list-style-type: none"> <li>✓ Technical Support: Available 24 X 7 (Unlimited)</li> <li>✓ Aviat Xpress (Web Support): Available 24 X 7 (Unlimited)</li> <li>✓ Repair Services: <ul style="list-style-type: none"> <li>➤ 30 Calendar Day is target turnaround time on OEM.</li> </ul> </li> <li>✓ Products not covered under the MLA: <ul style="list-style-type: none"> <li>○ ACS-160 Series T1 Multiplexers</li> <li>○ Antennas, Waveguides</li> <li>○ Chargers</li> <li>○ Jackfield DSX-1/DS</li> <li>○ Intraplex Channel Bank</li> </ul> </li> </ul>	SWW- OMEW000012MC	<ul style="list-style-type: none"> <li>OEM: <ul style="list-style-type: none"> <li>○ Fijitsu Flashwave-4100</li> <li>○ Wide bank M13 MUX</li> <li>○ Larus, STS-6400</li> </ul> </li> </ul>	\$49,664	
<ul style="list-style-type: none"> <li>✓ Technical Support: Available 24 X 7</li> <li>✓ Aviat Xpress (Web Support): Available 24 X 7</li> <li>✓ Provide general availability releases and product updates</li> </ul>	SWW- PV24G3XX1299	<ul style="list-style-type: none"> <li>Provision 7.1.2 101-500 Nodes SO#A91593</li> </ul>	\$12,000	

<b>2017/2018 Sub-Total AviatCare Extended Warranty and ProVision Software</b>	<b>\$181,675</b>
<b>Discount 30% (OEM excluded)</b>	<b>(\$39,603)</b>
<b>Total AviatCare Extended Warranty and ProVision Software</b> <b>10/1/2017 through 9/30/2018</b>	<b>\$142,072</b>
<b>2018/2019 Sub-Total AviatCare Extended Warranty and ProVision Software</b>	<b>\$183,313</b>
<b>Discount 30% (OEM excluded)</b>	<b>(\$40,095)</b>
<b>Total AviatCare Extended Warranty and ProVision Software</b> <b>10/1/2018 through 9/30/2019</b>	<b>\$143,218</b>
<b>2019/2020 Sub-Total AviatCare Extended Warranty and ProVision Software</b>	<b>\$183,313</b>
<b>Discount 30% (OEM excluded)</b>	<b>(\$40,095)</b>
<b>Total AviatCare Extended Warranty and ProVision Software</b> <b>10/1/2019 through 9/30/2020</b>	<b>\$143,218</b>
<b>Grand Totals: 4/1/2017-3/31/2020 (3 years)</b>	<b>\$428,508</b>
<b>Annual invoicing</b>	<b>\$142,836</b>

**Pricing Notes:**

- Prices quoted and payable in US Dollars
- Onsite Corrective Maintenance requires customer to have purchased all the necessary spares parts from all vendors in order to meet onsite response time.
- Any Purchase Order resulting from this proposal shall be subject to Aviat Networks Terms and Conditions of Sale
- Prices reflect scope of work as specified within this proposal
- Only the equipment listed in the above table shall be eligible to receive support this includes any spare units purchased under the above Aviat Networks Sales Order Numbers. All consumable items such as cables or batteries are excluded
- Maintenance Agreement does not include any facility maintenance. It will be customers responsibility to maintain all towers, shelters, air conditioners, generators and propane tanks
- The Aviat Networks maintenance level agreement requires that all similar products within the network be covered under similar service levels

### 3. SERVICE LEVEL SUPPORT DESCRIPTION

**Access to Aviat Networks Customer Online Technical Support Site**

The Customer will have access to the Aviat Networks Customer Online Technical Support web site 24/7 for a variety of tools and support services. Those tools/services include:

1. RMA Request & Status Updates.
2. RMA Reporting such as repair turnaround time performance.
3. Technical Support such as Service Request opening, reporting and status.
4. Information databases such as technical notes, frequently asked questions, solutions for commonly asked technical or operational issues.
5. Software Downloads.
6. Sales Order tracking and status (Eclipse Only).

URL: <http://www.aviatcloud.com/>

### 3.1 REPAIR SERVICES

Repair services are available to the Customer during the standard manufacturing equipment warranty period. This includes any repair or replacement of defective units during the stated warranty period. There may be additional charges during the warranty period for this service if customers are found to be returning a high level of NFF units, require advanced replacements, or send in a non-repairable unit. Prior to the warranty period expiring, customers may procure ongoing access to this support service through the purchase of an extended warranty program or through one of our AviatCare SLA support offerings. Otherwise the Repair service is made available for out of warranty products through a Per Incident billing process that can be enabled through our regional RMA Desk. See further details on how repair services are provided below.

All equipment under this specific Maintenance Level Agreement will be covered with our standard Repair / Replace policy. There is no limit to the number of units returned for repair but customer is subject to the same limitations for No Fault Found (NFF), damaged beyond repair units, non-returned Advanced replacement units where additional charges may apply:

- a) **Repair Center Support.** Customer shall place all RMA requests at the following link: [https://aviatcloud.com/rma\\_tracking.asp](https://aviatcloud.com/rma_tracking.asp). This link is available for use 24 hours a day, 7 days a week. Customers can also email or fax RMA requests to the appropriate Aviat Networks Repair Center. Aviat Networks will typically fax or email a confirmation with an RMA reference number within one (1) business day. Requests can also be made via telephone during such Aviat Networks Repair Center's Business Hours.

In order for Aviat Networks to process an RMA request, the customer must provide the following information:

- Company name;
- Shipping and billing address;
- Part Number;
- Serial Number of the defective unit(s)
- Unit software load;
- Description of the suspected failure;
- Whether any special requirements exist;
- Maintenance Level Agreement contract number (if applicable); and
- Provide a purchase order at the applicable price for billable requests. Billable requests include any request for express service regardless of warranty status. Contact your local Aviat Networks Repair Center for price information.

**Important Note:** The customer must include associated AviatCare Service Level Agreement (SLA) contract number in all correspondence(s) in order to avoid being invoiced for services falling within the scope of such Maintenance Level Agreement.

- b) **Turnaround Time.** Aviat Networks will provide a Turnaround time on repair as per the following:

- 20 Calendar Day turnaround time on Aviat Networks manufactured equipment
- 45 Calendar Day turnaround on Aviat Networks Manufactured Discontinued equipment

- c) **Turnaround Time Calculation.** Turnaround time is measured from the time that a Returned Unit is received at the Aviat Networks Repair Center, which will be advised at time of issuing a RMA, until the time that it is shipped from the Aviat Networks Repair Center. Thus, the measurement of turnaround time does NOT begin when the Returned Unit is shipped from Customer's premises and does NOT include the shipping time accrued after the Returned Unit is shipped from the Aviat Networks Repair Center to Customer's premises. Additionally, Turnaround time will not be guaranteed in the following situations:

- If more than five (5) Units of the same type or more than ten (10) Units of any type are received at the same time.

- Missing information such as failure details, return shipping address, shipping instructions and/or any other information that may affect the start of the repair process of the shipment of the Returned Unit as the repair completed.
  - Any Returned Unit is deemed No Fault Found.
  - Any Returned Unit received due to any of the reasons listed in the [Exclusions from Repair & Return](#) Clause of this Section.
  - Any Returned Unit received improperly packaged and therefore sustained physical or electrostatic damage in shipping.
  - Returned Units placed in Isolation.
  - Event of Excusable Delay as described under the [Excusable Delay](#) Clause of the Additional Terms & Conditions Section of this Agreement.
- d) **OEM.** For OEM, repair turnaround times are set by the OEM supplier. Aviat Networks close working relationship with OEM suppliers assures the best possible turnaround time. These times will be communicated to customer at time of RMA issuance.
- e) **Packaging and Shipping Procedures.** Both Aviat Networks and the Customer are obligated to ensure that all deliveries are packaged in such manner as to achieve suitable mechanical and environmental protection during storage, handling and transport to the delivery address. Electrostatic Discharge (ESD) precautions should be followed during handling and packaging of all Units delivered. For each consignment of Units shipped to Aviat Networks, the Customer must provide a detailed Packing List and Commercial (Proforma) Invoice to support the delivery. Each Commercial Invoice must clearly state the full description, the value of each Unit and the RMA Number. Once a Unit has been repaired and shipped to the Customer at the address provided by the Customer upon RMA request, Aviat Networks will send a pre-alert notification to the Customer comprising a faxed copy of the Commercial Invoice and Airway Bill Number pertaining to the shipment.
- f) **Exclusions from Repair & Return.** The services to be rendered by Aviat Networks under this Agreement shall not comprise any damage, defects, malfunctions or failures caused by one or more of the following:
- Damage caused by mishandling, customer or third-party negligence, abuse or operation outside the Aviat Networks environment specifications, or due to a cause not solely attributed to Aviat Networks.
  - Modifications, alterations, or repairs made other than by Aviat Networks.
  - Damages by persons other than Aviat Networks or its authorized service providers.
  - Any modification, removal or obliteration of a serial number or other identifying mark or any attempts thereof other than by Aviat Networks' authorized personnel.
  - Damage that occurs during shipment from the Customer premises to Aviat Networks' premises outside the RLP (if applicable).
  - Installed, stored, used, handled or maintained contrary to Aviat Networks' written instructions.
  - Used in conjunction or combination with third-party material or equipment without the consent of Aviat Networks.
  - Units returned for repair where there has been misuse, neglect, power failures, surges, accident or acts of nature such as fire, lightning strikes or flood.

Repairs necessitated during the Agreement period by any of the above causes may be made by Aviat Networks, and the Customer shall pay Aviat Networks' standard charges for time and materials, together with all shipping and handling charges arising from such repairs.

- g) **Stockpiling of Failed Units.** The Customer agrees to obtain an RMA Number for all failed Units from an Aviat Networks Repair Center immediately following a failure and return the Units for repair immediately after receipt of the RMA Number from Aviat Networks. The customer agrees that this Agreement will not apply retrospectively to cover any Units failed and in the Customer's possession prior to the execution date of this Agreement, and will not apply to any Units for which RMA Numbers had already been obtained from Aviat Networks prior to the date of execution of this Agreement. Following execution of this Agreement the Customer agrees not to stockpile failed Units and accepts that Aviat Networks will not be required to meet the Turnaround Times outlined in this Agreement if the Units are not returned to Aviat Networks on receipt of an RMA Number or if they are stockpiled.
- h) **No Fault Found Fee.** If the number of Returned Units that the Customer reports are defective, but are thereafter tested by Aviat Networks and found to meet the applicable Aviat Networks Product specifications, exceeds ten percent (10%) of the total number of Returned Units received by Aviat Networks from the Customer during each year of the Support period, then Aviat Networks will charge the Customer the then-current [No Fault Found](#) inspection fee for each such non-defective Returned Units in excess of such ten percent (10%).
- i) **Damaged Beyond Repair.** Returned Units that Aviat Networks (in its sole discretion) determined are damaged Beyond Repair or have been repaired (or otherwise modified) by a party other than Aviat Networks will be placed in Isolation. The Customer shall be advised by fax or e-mail, within ten (10) days working days, of the nature and extent of the damage. The Customer shall be responsible for informing Aviat Networks of the next course of action. If the Customer decides to replace the Unit(s), they must follow the usual purchasing process. Note: If the Returned Unit is no longer in current manufacture and/or is OEM, Aviat Networks will not guarantee availability of a Unit for sale.

### 3.2 REMOTE TECHNICAL SUPPORT 24 X 7

24 X 7 Remote Support provides around-the-clock (24 X7) telephone access to Aviat Networks' Technical Assurance Center in order to resolve Critical Service Requests, Major Service Requests, Minor Service Requests and Inquiry Service Requests.

- a) **Telephone Number.** Customer may contact Aviat Networks' Technical Assistance Center (TAC) regarding such Service Requests via telephone at any time during normal business hours. **OR** Customer may contact Aviat Networks' Technical Assistance Center (TAC) regarding such Service Requests via telephone at any time during the day or night. For night support services (after business hours in the local time zone), Aviat Networks will handle all such requests that are Critical or Major that the Customer reasonably categorizes as being High Priority. In addition with this service customer can pre-schedule after hours support when doing a new software installation or a network upgrade related to covered equipment.
- b) **Rapid Response Time.** Aviat Networks will route Critical Service Requests to the appropriate TAC subject matter expert within fifteen (15) minutes of call receipt.
- c) **Service Request Number.** Aviat Networks will assign, to each Service Request, a number that will be logged, tracked and stored in our Case Management database.
- d) **Service Request Management.** Aviat Networks will dedicate continuous attention to Critical and Major Service Requests until service is restored or request is closed. Aviat Networks will work to resolve the Service Request until Customer accepts the proposed solution, at which point the TAC will close the Service Request.
- e) **Documented Escalation Procedures.** Aviat Networks will implement internal escalation and notification procedures in order to facilitate the timely resolution of Service requests by a TAC Engineer with an adequate level of expertise. The technical support process includes rigid managerial escalations that are intended to facilitate the appropriate handling of recovery efforts and Customers being regularly updated on the status of the Service Request. Additional information on this escalation

process is available in our Global Network Service Customer Support guidelines document available on our website at [www.aviatnetworks.com](http://www.aviatnetworks.com).

- f) **Service Request Submission.** Under this Agreement, there is no limit to the number of Service Requests that Customer may submit for resolution. Customer may also define and authorize specific users within its organization to have access to this Service Request Submission Service. To ensure appropriate management of this support Aviat Networks has implemented a Support Assurance Program where an Express PIN will be assigned to each customer which clearly identifies the level of service a customer is entitled to receive. All Service Request Submissions will require Express PIN information prior to being submitted.

### 3.2.1 Service Request Severity Classifications

There are four (4) Service Request severity classifications: (a) Critical; (b) Major; (c) Minor; and (d) Inquiry. Critical, Major and Minor Service Requests pertain to problems in the Product. Inquiry Service Requests pertain to questions about the Product or Services. The four (4) Service Request severity classifications are defined as follows:

- a) **Critical Service Requests** are those that severely affect service, traffic, billing and/or maintenance capabilities, and require immediate corrective action (regardless of the time of day or day of the week).
- b) **Major Service Requests** are those that cause conditions that seriously affect Product operation, maintenance and/or administration, and require immediate attention. The urgency is less than in Critical Service Requests because of a lesser immediate or impending effect on Product performance, customer and/or network operation and revenue.
- c) **Minor Service Requests** are problems that are tolerable during Product use, do not significantly impair the functioning of the Product and do not significantly affect service to customers.
- d) **Inquiry Service Requests** are questions about technical details concerning the usage or behavior of the Product.

## 3.3 PROVISION SUPPORT 24 X 7

Aviat Networks shall provide remote technical support to the Customer on ProVision. The remote technical support 24 X 7 shall be provided as per the terms outlined in the Remote Technical Support 24 X 7 section of this Agreement.

Aviat Networks shall provide support on the current and previous ProVision production release and will investigate all reproducible product anomalies for the supported version. Aviat Networks shall also provide general availability releases and product updates to the Customer free of charge during the coverage period.

### Customer Responsibility

To enable the Aviat Networks TAC to fully investigate ProVision issues, the Customer shall provide the TAC the appropriated logs and remote access where possible. The Customer will provide the capability to allow Aviat Networks to remotely access the Customer's network by means of a secure internet connection to the Customer's site. This connection process will need to be defined at time of agreement such that any issues arising after Agreement closure can be addressed expeditiously.

### Exclusion from Provision Support 24 X 7

The services to be rendered on ProVision by Aviat Networks under this Agreement shall not comprise any services, which are required as a result of one or the more of the following:



- Customers using old versions of ProVision. The ProVision Agreement provides regular updates; customers are required to have the current GA release or the previous GA release installed and commissioned before they can obtain Aviat Networks technical support.
- Customer's lack of basic user training. It is expected that all users will have received basic user training when the ProVision system was installed.
- Network Planning; NMS Integration; Training courses; Installation and Commissioning; On Site Support. These are separate Aviat Networks service offerings, which are not delivered under this Agreement.
- Due to the complex nature of ProVision issues, which may be network related rather than ProVision related, not all Customer-defined level three product anomalies can be rectified within the commercial bounds in which Aviat Networks operates. Aviat Networks will require that all product anomalies are reproducible, prior to the commencement of any detailed fault analysis or potential product re-engineering. Aviat Networks undertakes to provide a response on all logged product issues and will provide work-around's where possible

## 4. PAY-PER-INCIDENT SERVICES & PRICING

Customer may purchase, subject to availability, one (1) or more Pay-Per-Incident Services for any Aviat Networks Product. A summary of the current pricing applicable to the Pay-Per-Incident Services is set forth further in this Section. The current pricing may be revised by Aviat Networks at any time. Pay-Per-Incident definitions, descriptions and pricing is listed and regularly updated in the Aviat Networks Global Network Service Customer Support Guidelines document located at <http://www.aviatnetworks.com/support/customer/>. <http://us.aviatnetworks.com/services/aviatcare/protect-maintain/>. The Customer will be invoiced for any Pay-Per-Incident Services promptly following Aviat Networks performance thereof.

PAY-PER-INCIDENT SERVICE	PRICING APPLICABLE TO IN-WARRANTY (PER UNIT)	PRICING APPLICABLE TO MAINTENANCE CONTRACT (PER UNIT)	PRICING APPLICABLE TO OUT-OF-WARRANTY (PER UNIT)
Repair	Free of charge	Free of charge	Fixed Repair price based on the current list price of the defective unit. Contact the local Aviat Networks Repair Center.
Advance Replacement <sup>1</sup>	Based on list price of the unit for standard Advanced Replacement requests, Expedited Advanced Replacement is an additional \$750/FRU	Subject to terms in the Agreement – Can be no additional charge	Fixed Replacement price. Contact the local Aviat Networks Repair Center.
No Fault Found	No Charge, as long as total NFF does not exceed 10% of returns	Free of charge providing quantity does not exceed ten percent (10%) of the total number of Returned Units received by Aviat Networks from Customer during each year of the Support Period.	Standard Unit Repair price. Contact the local Aviat Networks Repair Center.

## 5. AVIAT NETWORKS CONTACTS

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Outlined below is the process to contact Aviat Networks once the Agreement is effect.

For Questions or concerns on the Agreement either before or after it is in effect, please contact:	
<b>NORTH AMERICA Repairs, Returns &amp; Advance Replacements</b>  Toll free: (Canada/USA): 1-800-227-8332 (Option 2-1 for RMA or Option 2-2 to purchase spares)  Direct number: 1-210-526-6345  FAX: 1-210-526-6315  E-mail: <a href="mailto:CustomerCare.Americas@aviatnet.com">CustomerCare.Americas@aviatnet.com</a>  Online RMA Request: <a href="https://aviatcloud.com/rma_tracking.asp">https://aviatcloud.com/rma_tracking.asp</a>	<b>NORTH AMERICA Technical Support</b>  Toll free (Canada/USA): 1-800-227-8332 (Option1, enter PIN, press 1 to confirm PIN, then Option 1 for TAC)  Direct number: 1-210-526-6345  Fax: 1-210-526-6315  E-mail: <a href="mailto:TAC.AM@aviatnet.com">TAC.AM@aviatnet.com</a>  Online Technical Assistance Request: <a href="http://www.aviatcloud.com">www.aviatcloud.com</a>

## 6. ADDITIONAL TERMS AND CONDITIONS

This agreement is between the party purchasing services described herein (the "Customer") and, for Customers located in the United States or outside of the United States, with Aviat U.S., Inc., a wholly owned subsidiary of Aviat Networks Inc., with offices at 280 N McCarthy Blvd, Suite 200, Milpitas, CA 95035 hereinafter referred to as "Aviat Networks".

### 6.1 SCOPE OF SERVICES

Aviat Networks will furnish the services outlined in the Service Level Support Section of this Agreement hereinafter referred to as "Services" for the Products for Customer as may be required from time to time for the period specified in the Duration of Support Period Section providing receipt and acceptance of the Customer's purchase order. The Services will be provided in conformity with the terms, conditions, specifications and other requirements of this Agreement and each request for Services will be governed by the terms and conditions stated herein.

The Customer must ensure that the Products to be included in this Agreement be in good operating condition prior to the commencement of this Agreement. Aviat Networks reserves the right to inspect any and all of the Products to be included in the Agreement prior to the commencement of the Agreement, and if the Product is found to be defective, the Customer shall be responsible for the cost of repair of the defective units.

An authorization to return Units to Aviat Networks under this Agreement must be obtained from an Aviat Networks representative prior to making shipment to the Aviat Networks' Repair Center. Aviat Networks warrants that each Unit that is repaired or replaced under this Agreement, shall, at the time of return to Customer, for a period of ninety (90) days thereafter or until the expiration or termination of this Agreement, whichever is longer, be free from defects in materials and workmanship. Such warranty shall not include any consumable components to which a specific manufacturer's guarantee applies. If any Unit shall prove to be defective in materials or workmanship under normal intended usage, operation and maintenance during the term of this Agreement, as determined by Aviat Networks after examination of the Unit claimed to be defective, then Aviat Networks shall repair or replace, at Aviat Networks' sole option, such defective Unit, in accordance with procedures specified herein, at no additional cost, exclusive, however, of the cost of labor by the Customer's own employees, agents or contractors in identifying, removing or replacing the defective part(s) of the Units.

Liability of Aviat Networks for breach of any and all warranties hereunder is expressly limited to the repair or replacement of defective Units as set forth in this Agreement, and in no event shall Aviat Networks be liable for special, incidental or consequential damages by reason of any breach of warranty or defect in materials or workmanship. Aviat Networks shall not be responsible for repair or replacement of Products which have

been subjected to neglect, accident (including fire, flood, storm, lightning strike, or other act of God), Customer's fault or negligence or improper use, or Products which have been altered by anyone other than Aviat Networks or an agent authorized by Aviat Networks or Products that are not repairable due to component availability.

Expedited Services such as Emergency Repair may be requested and will be executed based on inventory availability only. Expedited Services such as but not limited to Emergency Repair, etc. are not included in the Program and will be quoted at time of service request.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER ORAL, WRITTEN, EXPRESSED, IMPLIED, OR STATUTORY. IN PARTICULAR, THE IMPLIED WARRANTIES OF FITNESS FOR PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY DISCLAIMED AND SHALL NOT BE APPLICABLE EITHER FROM AVIAT NETWORKS OR ANY OTHER EQUIPMENT MANUFACTURER. AVIAT NETWORKS' WARRANTY OBLIGATIONS AND CUSTOMER'S REMEDIES THEREUNDER ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CONTRACT, UNDER NO CIRCUMSTANCES SHALL AVIAT NETWORKS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY CLAIMING UNDER CUSTOMER FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOSS OF CAPITAL, REVENUE OR PROFITS AS A RESULT OF A BREACH OF ANY PROVISION OF THIS CONTRACT. CUSTOMER HEREBY INDEMNIFIES AVIAT NETWORKS AGAINST ALL LOSS OR LIABILITY FROM CLAIMS BY CUSTOMER OR A THIRD PARTY ARISING OUT OF OR RELATING TO THE INSTALLATION, OPERATION, OR USE OF THE EQUIPMENT, WHETHER ON ACCOUNT OF NEGLIGENCE OR OTHERWISE. IN NO EVENT SHALL AVIAT NETWORKS' LIABILITY TO CUSTOMER, OR ANY PARTY CLAIMING THROUGH CUSTOMER EXCEED THE LESSER OF \$100,000.00 USD OR THE ACTUAL SALES PRICE PAID BY CUSTOMER FOR ANY ITEMS SUPPLIED HEREUNDER.

## 6.2 PRICES/PAYMENT/TAXES/SHIPPING

All payments shall be made via bank transfer to the accounts specified on the invoice, in full in Advance of the commencement of each year of service/coverage. The total amount is due and payable to Aviat Networks within thirty (30) days of the invoice date, subject to credit approval. In the event any payment due by Customer hereunder is past due, Aviat Networks reserves the right to withhold Services until such payment is received. Prices and payment terms for Services or Products not included in this Agreement, such as Emergency Repair, etc., will be established on a case-by-case basis subject to the mutual agreement of the parties.

All prices are exclusive of all sales, use, excise, and other taxes, duties or charges. Unless evidence of tax exempt status is provided by Customer, Customer shall pay, or upon receipt of invoice from Aviat Networks, shall reimburse Aviat Networks for all such taxes or charges levied or imposed on Customer, or required to be collected by Aviat Networks, resulting from this transaction or any part thereof.

All shipments made by Aviat Networks under this Agreement are made via the methods (as applicable) outlined in the Repair Services and/or Advance Replacement Sections or the Repair Logistics Program Section (if purchased) of this Agreement. Unless instructed otherwise, Aviat Networks will arrange for standard commercial shipping. In the event Customer requires other than standard commercial shipping, Customer will be responsible for any additional costs incurred. Responsibilities regarding the export of items delivered under this Agreement are detailed in the Export and Re-Export Restrictions and Export Documents Sections below.

Late payments shall result in the assessment of a late charge equal to one and one-half percent (1 ½%) per month on any outstanding balance, or the maximum amount of interest chargeable by law, whichever is less.

## 6.3 EXPORT AND RE-EXPORT RESTRICTIONS

Performance and delivery of the equipment, documents, Services and Software sold or delivered hereunder are subject to export control laws and regulations of the United States, as applicable, and conditioned upon

receipt of required U.S. Government licenses and approvals by Aviat Networks. Customers shall not export or re-export Products or technical data delivered hereunder from the United States without complying with regulations of the Bureau of Export Administration of the United States Department of Commerce, as applicable. Customers shall not re-export the Products and technical data delivered hereunder from the country of delivery or to any facility engaged in the design, development, stockpiling, manufacturing or use of missile, chemical or biological weapons without fully complying with the regulations of the above United States government agencies. Customer warrants that it will comply with the United States Foreign Corrupt Practices act of 1997, as amended. Customer shall defend, indemnify and hold Aviat Networks harmless from and against any loss, damage, or liability arising out of Customer's failure to comply with this Section.

#### 6.4 EXPORT DOCUMENTS

Customer shipments, under this Agreement, to Aviat Networks shall be made via the methods (as applicable) outlined in the Repair Services and/or Advance Replacement Sections or the Repair Logistics Program Section (if purchased) of this Agreement. Customer shall be responsible for insurance and for clearing incoming Products through customs in their country.

Customers shall be responsible for obtaining any necessary import licenses into the country of delivery. Aviat Networks shall provide certificates of delivery, affidavits of origin, and other information under its control which is necessary for Customer to import Products.

Customers shall provide all information, certificates and Letters of Assurance necessary for Aviat Networks to obtain any export licenses required for Aviat Networks to export Products out of the country for repair, as applicable. Aviat Networks shall be responsible for selection and/or approval of freight forwarder(s). In the event that Customer wishes to utilize a freight forwarder that is not acceptable to Aviat Networks, Customer shall be the shipper of record and shall be responsible for obtaining required export licenses which shall be in the name of the Customer.

#### 6.5 EXCUSABLE DELAY

Aviat Networks shall be excused from performance under this Agreement and not be liable to Customer for delay in performance attributable in whole or in part to any cause beyond its reasonable control, including but not limited to, actions or inactions of government whether in its sovereign or contractual capacity, judicial action, war, civil disturbance, insurrection, sabotage, act of a public enemy, labor difficulties or disputes, failure or delay in delivery by Aviat Networks' suppliers or subcontractors, transportation difficulties, shortage of energy, materials, labor or equipment, accident, fire, flood, storm or other act of God, or Customer's fault or negligence.

In the event of an excusable delay, Aviat Networks shall make reasonable efforts to notify Customer of the nature and extent of such a delay and Aviat Networks (i) will be entitled to a schedule extension on at least a day-for-day basis, (ii) in the event of Customer's fault or negligence, will be also entitled to an equitable adjustment in the price of this contract.

#### 6.6 TERMINATION

Either party may terminate this Agreement upon ninety (90) days written notice without cause. In such event, Aviat Networks shall refund to Customer a pro-rated amount of the annual fee paid based on the complete months remaining in the term. In the event Customer terminates the Agreement without cause earlier than the ninth (9th) month of each year of the Agreement, Aviat Networks reserves the right to retain the pro-rated amount of the annual fee through the month of termination or the actual cost incurred by Aviat Networks hereunder, whichever is greater.

Either party may terminate this Agreement immediately upon notice in writing to the other party if the other party shall breach any provision of this Agreement in any respect and such breach remains un-remedied thirty (30) days after notice thereof from the non-breaching party. In the event this Agreement is terminated due to the breach of Customer, Aviat Networks shall retain the entire amount of the annual fee paid by Customer.

The right of termination provided herein is absolute and neither party shall be liable to the other for damages or otherwise by reason of such termination.

## 6.7 ASSIGNMENT

Customer may not assign this Agreement in whole or in part without the prior written consent signed by an officer of Aviat Networks. Such consent shall not be unreasonably withheld.

## 6.8 GOVERNING LAW, VENUE AND JURISDICTION

This Agreement will be governed by and construed in accordance with the laws of the **State of California**. The parties agree that any action to enforce any provision of this Agreement or arising out of or based upon this Agreement or the business relationship between Aviat Networks and Customer will be brought in a **local or Federal court** of competent jurisdiction in **Santa Clara, CA**.

## 6.9 ENFORCEABILITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired.

## 6.10 LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY CLAIMING UNDER THE OTHER PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, AND CONSEQUENTIAL OR LOSS OF PROFIT TYPES OF DAMAGES AS A RESULT OF A BREACH OF ANY PROVISION OF THIS CONTRACT. CUSTOMER SHALL INDEMNIFY AVIAT NETWORKS AGAINST ALL LOSS OR LIABILITY FROM CLAIMS BY CUSTOMER OR A THIRD PARTY ARISING OUT OF OR RELATING TO CUSTOMER'S INSTALLATION, OPERATION, OR USE OF THE SERVICES OR PRODUCTS PROVIDED HEREUNDER, WHETHER ON ACCOUNT OF NEGLIGENCE OR OTHERWISE.

## 6.11 COMPLIANCE WITH LAW

Customer agrees to assist Aviat Networks to comply with any applicable conventions, laws, rules, regulations, and bylaws incident to its activities under this Agreement, including, without limitation, United States export control regulations, the United States Foreign Corrupt Practices Act, and the United States anti-boycott regulations. Customer will promptly deliver to Aviat Networks a copy of any notice or instrument alleging a violation of any of these laws.

## 6.12 ENTIRE AGREEMENT

This Agreement supersedes all previous communications, transactions, and understandings, whether oral, or written, and constitutes the sole and entire agreement between the parties pertaining to the subject matter hereof. No modification or deletion of, or addition to these terms shall be binding on either party unless made in writing and signed by a duly authorized representative of both parties.

# 7. SIGNATURES

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names.

**AVIAT U.S., Inc.**

**State of Montana**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

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